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6 Attorneys for Plaintiff
7 DANIEL CHUNG

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 DANIEL CHUNG, an individual,

Case No.

12 Plaintiff,

**COMPLAINT FOR DAMAGES,
DECLARATORY AND INJUNCTIVE
RELIEF**

13 vs.

DEMAND FOR JURY TRIAL

14 COUNTY OF SANTA CLARA, a public
15 entity; JEFFREY F. ROSEN, individually; and
16 DOES 1-50, inclusive,

17 Defendants.

18
19 **INTRODUCTION**

20 1. Plaintiff Daniel Chung (“Plaintiff” or “Mr. Chung”) is a deputy district attorney
21 in Santa Clara County. He has been employed by the Santa Clara County District Attorney’s
22 Office since 2018. As a deputy district attorney, Mr. Chung reports to, among others, Jeffrey
23 Rosen, the Santa Clara County District Attorney.

24 2. Mr. Chung brings this action pursuant to 42 U.S.C. § 1983, and the Constitution
25 of the United States, to redress deprivation of rights secured by the United States Constitution.
26 Defendants, County of Santa Clara, Jeffrey Rosen, and DOES 1 through 50 (hereinafter,
27 collectively “Defendants”), violated Mr. Chung’s constitutional right to free speech.

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JURISDICTION AND VENUE

3. This action arises under 42 U.S.C. § 1983, and the Constitution of the United States. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1343, and 1367(a).

4. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1339(b) because the action arises therein, and a substantial part of the events giving rise to this action occurred therein.

INTRADICTRICT ASSIGNMENT

5. Assignment of this action to the San Jose Division is proper under Civil Local Rules 3-2(c) and 3-2(e), because a substantial part of the events giving rise to the claims alleged herein occurred in the City of San Jose, County of Santa Clara.

PARTIES

6. Mr. Chung is, and at all times herein mentioned was, employed by the County of Santa Clara.

7. Defendant County of Santa Clara (“County”) is, and at all times herein mentioned was, a chartered subdivision of the State of California, a public entity, with the capacity to sue and be sued. Defendant County and defendant Rosen are responsible for the actions, omissions, policies, procedures, practices, and customs of its various agents and agencies, including the Santa Clara County District Attorney’s Office and its employees and agents. At all times relevant herein, defendant County and defendant Rosen were responsible for assuring that the actions, omissions, policies, procedures, practices, and customs of the Santa Clara County District Attorney’s Office, their employees and agents, and Does 1 through 50, inclusive, complied with the laws of the State of California and the Constitution of the United States.

8. Defendant Jeffrey Rosen (“District Attorney Rosen” or “Defendant Rosen”) is, and at all times herein mentioned was, the Santa Clara County District Attorney. District Attorney Rosen is sued in his individual capacity.

9. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.

1 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
2 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
3 defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's
4 damages as herein alleged were proximately caused by their conduct.

5 10. Each defendant sued in this complaint acted as the agent or employee of every
6 other defendant. Any reference in this complaint to "defendant," "defendants," or to an
7 individually-named defendant, also refers to Does 1 through 50.

8 **GENERAL ALLEGATIONS**

9 11. Plaintiff hereby incorporates by reference paragraphs 1 through 10, inclusive.

10 12. Mr. Chung is Korean American. He grew up in Milpitas. After graduating from
11 Harvard University and Columbia Law School, Mr. Chung returned to Santa Clara County in
12 2018 to work as a deputy district attorney.

13 13. Mr. Chung quickly proved to be an outstanding deputy district attorney. In
14 2020, he was awarded the Robert L. Webb Award, an "Excellence Award" presented by the
15 Santa Clara County District Attorney. Mr. Chung prosecuted domestic violence cases and
16 served in the Violent Felonies Unit. The Violent Felonies Unit is an important assignment that
17 is highly regarded and much sought after by deputy district attorneys.

18 14. On February 14, 2021, Mr. Chung published an opinion piece in a local
19 newspaper about the recent surge of racism and violence towards Asian Americans following
20 the COVID-19 pandemic. More specifically, Mr. Chung's op-ed discussed California's
21 ongoing criminal justice reform efforts and the violence against Asian Americans in the Bay
22 Area.

23 15. On February 16, 2021, and thereafter, Mr. Chung was wrongfully disciplined for
24 his op-ed piece. Immediately thereafter Mr. Chung was reassigned to Mental Health Court and
25 then to Juvenile Justice. These assignments are generally considered less prestigious. Mr.
26 Chung was not provided with an explanation of the reason for the reassignment.

27 16. On May 28, 2021, Mr. Chung was placed on leave and was walked out of the
28 District Attorney's Office by three armed investigators.

1 17. On or about May 31, 2021, the Lead Criminal Investigator in the District
2 Attorney's Bureau of Investigation, Captain Michael Whittington, issued a "be on the lookout"
3 notice ("BOLO") to the entire District Attorney Office Staff. The notice alerted the staff
4 without explanation that "DDA Chung is not allowed on County property until further notice,"
5 and included a non-work photograph of Mr. Chung.

6 18. On or about June 2, 2021, Captain Whittington issued a second BOLO notice to
7 all employees at the District Attorney's office. The notice specified that Mr. Chung was "not
8 allowed on County premises occupied by or affiliated with the District Attorney's Office."

9 19. On September 10, 2021, Mr. Chung received a Notice of Recommended
10 Disciplinary Action from Assistant District Attorney, Stacey Lynn Capps. Ms. Capps would
11 recommend Mr. Chung be terminated from his employment. A hearing on the recommended
12 termination is pending.

CLAIM FOR RELIEF

Violation of Right to Free Speech Under U.S. Const., Amend. I

[42 U.S.C. § 1983]

16 20. Plaintiff hereby incorporates by reference paragraphs 1 through 19, inclusive.

17 21. The First Amendment to the United States Constitution provides that “Congress
18 shall make no law … abridging the freedom of speech, or of the press.” The First Amendment
19 applies to all government organizations in the United States. It applies to state and local
20 governments through operation of the Fourteenth Amendment Due Process Clause.

21 22. Public employees have the right to be free from government interference in their
22 speech based on the speech's content. Such restrictions are rarely permitted. As Justice
23 Thurgood Marshall explained, the rationale for prohibiting suppression of public employee
24 speech pertaining to matters of public interest is to "ensure that public employers do not use
25 their authority over employees to silence discourse, not because it hampers public functions but
26 simply because superiors disagree with the content of employees' speech." *Rankin v.*
27 *McPherson*, 483 U.S. 378, 384 (1987). A public employee's speech is protected if (1) the
28 speech pertains to a matter of public concern, (2) the employee spoke as a private citizen and

1 not a public employee, and (3) the employee's speech interest outweighs the agency's interest
 2 in promoting efficiency and effectiveness. *See Pickering v. Board of Ed. of Township High*
 3 *School Dist. 205, Will County, Illinois*, 391 U.S. 563 (1968); *Eng v. Cooley*, 552 F.3d 1062,
 4 1070-71 (9th Cir. 2009).

5 23. Defendants deprived Mr. Chung of his rights under the First Amendment to the
 6 United States Constitution when they took adverse employment action that included harassment
 7 and retaliation due to Mr. Chung's having voiced his concerns about the treatment of Asian
 8 American crime victims.

9 24. Defendants' adverse employment actions against Mr. Chung were such that a
 10 reasonable employee would have found them to be materially adverse and that they would have
 11 dissuaded a reasonable employee of defendants from engaging in the protected speech activity.

12 25. Mr. Chung's speech was a substantial or motivating factor for the adverse
 13 employment actions taken against him by defendants.

14 26. Defendants' intentional actions and failures, including but not limited to,
 15 policies, training, and practices, along with a failure to investigate and remedy unlawful
 16 retaliatory actions as alleged above, constitute a policy, pattern, practice, and custom of the
 17 District Attorney's Office of Santa Clara County, and defendant Rosen, the District Attorney.
 18 Defendants deprived Mr. Chung of his protected fundamental right to free speech under the
 19 First Amendment to the U.S. Constitution.

20 27. Defendants acted under color of state law in violating Mr. Chung's rights,
 21 privileges, and immunities guaranteed by the First Amendment to the U.S. Constitution.

22 28. Defendants' actions have caused and continue to cause Mr. Chung substantial
 23 loss, including, but not limited to, professional injury, loss of reputation, loss of promotional
 24 opportunities, and other employment benefits. Additionally, Mr. Chung has suffered
 25 humiliation, embarrassment, anguish, and severe emotional distress, and has incurred attorneys'
 26 fees all to his damage in an amount according to proof.

27 29. Defendant Rosen's acts were done with malice, fraud, oppression, and in
 28 reckless disregard of Plaintiff's constitutional rights, justifying an award of punitive damages.

1 WHEREFORE, plaintiff prays for relief as set forth below.

2 **PRAAYER FOR RELIEF**

3 1. For general damages, in an amount according to proof;

4 2. For special damages, in an amount according to proof;

5 3. For civil penalties to the extent allowed by law;

6 4. Punitive damages against defendants, as allowed by law;

7 5. For attorneys' fees, as allowed by law;

8 6. For costs of suit;

9 7. For interest as allowed by law;

10 8. For any other relief as allowed by law, and

11 9. For such other and further relief as the Court may deem proper.

12 DATED: September 28, 2021

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18 Attorneys for Plaintiff
19 DANIEL CHUNG

DEMAND FOR JURY TRIAL

20 Plaintiff hereby demands a jury trial as provided by Amendment VII to the United States
21 Constitution and by Rule 38(a) of the Federal Rules of Civil Procedure.

22 DATED: September 28, 2021

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